

1 THE HONORABLE JAMES L. ROBART
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 SEATTLE DIVISION

11 SEAGEN INC.,

12 Petitioner,

13 v.

14 DAIICHI SANKYO CO., LTD.,

15 Respondent.

Case No. 2:22-cv-01613-JLR

**PETITIONER SEAGEN INC.’S
SUPPLEMENTAL BRIEF RE RIPENESS OF
PETITION TO VACATE ARBITRATION
AWARD**

1 In a minute order dated February 13, 2023, the Court ordered Seagen to “file
 2 supplemental briefing regarding why its petition to vacate the Award is ripe for judicial
 3 review in light of the abovementioned legal principles and Seagen’s contention that the
 4 Award is non-final under the FAA.” (Dkt. 66, Minute Order at 3.) Seagen submits this
 5 response.

6 **I. THE PETITION TO VACATE THE INTERIM AWARD IS NOT YET RIPE FOR**
 7 **JUDICIAL REVIEW**

8 As Seagen showed in its reply, the Interim Award is not final. (See Dkt. 63, Reply in
 9 Support of Petition to Vacate at 9–10.) Seagen filed this petition as a protective measure because
 10 there was ambiguity when the Interim Award was issued as to its finality. (See Award at 20, 45;
 11 Dkt. 63, Reply at 9.) The Arbitrator has since confirmed that “no Final Award has been issued in
 12 this arbitration” and that “Seagen’s pending petition to vacate the Interim Award appears to be
 13 interlocutory.” (Dkt. 50, Ex. A at 3.) Under Ninth Circuit law, the decision is not yet ripe for
 14 judicial review. *Millmen Local 550 v. Wells Exterior Trim*, 828 F.2d 1373, 1386–77 (9th Cir.
 15 1987); *Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1022 (9th Cir.
 16 1991) (“judicial review of *non-final* arbitration awards ‘should be indulged, if at all, only in the
 17 most extreme cases’” (emphasis in original)); *see also Banco de Seguros v. Mut. Marine Offices,
 18 Inc.*, 230 F. Supp. 2d 362, 367–68 (S.D.N.Y 2002), *aff’d* 344 F.3d 255 (2d Cir. 2003) (district
 19 courts lack authority to confirm or vacate arbitral awards that are not final); *Century Indem. Co. v.
 20 Certain Underwriters at Lloyd’s London*, No. 11 Civ. 1040(RJS), 2013 WL 104773, at *3
 21 (S.D.N.Y. Jan. 10, 2012) (“the FAA only permits a federal court to confirm or vacate an arbitration
 22 order that is final”).

23 **II. THE COURT CAN ENTER AN ORDER STAYING THE CASE PENDING**
 24 **DELIVERY OF A FINAL AWARD**

25 If the Court concludes that the Interim Award is not yet final, it should enter an order
 26 staying the case until delivery of a final award. In *Epic Diving & Marine Services, LLC v. Ranger*
 27 *Offshore, Inc.*, C.A. No. 4:16-cv-386, 2017 WL 1397018 (S.D. Tex. Feb. 28, 2017), the court faced

1 a similar circumstance: a petition to confirm an interim arbitration award that was filed before the
 2 final award had been issued. *Id.* at *2. The court ordered that “this case be stayed, pending full
 3 and final determination by the Tribunal.” *Id.* A similar stay would be appropriate in this case.
 4 Judicial economy would be served as the Court has already devoted time to reviewing this motion.
 5 The Court would be well-positioned to resolve the petition on the merits once a final award has
 6 been delivered.

7 Dated: February 17, 2023

8 */s/Christopher B. Durbin*
 9 Christopher B. Durbin (WSBA No. 41159)
 COOLEY LLP
 10 1700 Seventh Avenue, Suite 1900
 Seattle, WA 98101-1355
 Tel.: (206) 452-8700
 Fax: (206) 452-8800
 Email: cdurbin@cooley.com

12 Michael A. Jacobs (*pro hac vice*)
 13 Matthew A. Chivvis (*pro hac vice*)
 14 Matthew I. Kreeger (*pro hac vice*)
 MORRISON & FOERSTER LLP
 425 Market Street
 15 San Francisco, California 94105-2482
 Tel.: (415) 268-7000
 Fax: (415) 268-7522
 Email: MJacobs@mofo.com
MChivvis@mofo.com
MKreeger@mofo.com

18 Evelyn L. Chang (*pro hac vice*)
 19 MORRISON & FOERSTER LLP
 20 755 Page Mill Road
 Palo Alto, California 94304-1018
 Tel.: (650) 813-5600
 Fax: (650) 494-0792
 Email: EvelynChang@mofo.com

23 Hui Zhao (*pro hac vice*)
 24 MORRISON & FOERSTER LLP
 25 701 Brazos Street Suite 1100
 Austin, Texas 78701-3232
 Tel.: (512) 767-0324
 Fax: (650) 494-0792
 Email: HZhao@mofo.com

27 *Attorneys for Petitioner Seagen Inc.*